

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

UNITED STATES OF AMERICA

§

VS.

§

Case No.: 1:19-cr-00601-1

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ALVARO VEGA-RODRIGUEZ

§

§

MOTION TO SUPPRESS EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the Defendant, **ALVARO VEGA RODRIGUEZ** by and through his attorneys of record, **ERNESTO GAMEZ, JR., ERIN E. GAMEZ, of The Law Offices of Ernesto Gamez, Jr., P.C.**, moves the court to suppress all evidence, materials and statements obtained from the unlawful search, detention, and interrogation on or about June 4, 2019, by the Department of Homeland Security Investigations and the Brownsville Police Department and/or any law enforcement officer, on the following grounds:

I.

The aforementioned law enforcement agencies, on or about June 4, 2019, forcefully entered the Defendant's homestead on or before 6:00 a.m., ordered all occupants out of the home and onto the front lawn, handcuffed and detained the Defendant, and began interrogating the Defendant, without validly Mirandizing the Defendant and affording him of his rights. This unlawful interrogation without the Defendant's knowing, voluntary consent and waiver, resulted in the search and seizure of the computer passwords, access codes, laptop computers, files and other admissions against the Defendant's interests.

During the interrogation of Defendant at his homestead any and all statements and admissions excised from the Defendant were made prior to the execution of any such waiver by the Defendant of the rights afforded to him by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Any and all statements made by the Defendant, and fruits of those statements, were not validly secured as they were not the product of a voluntary, a knowing, and intelligent relinquishment of such rights.

II.

The search and seizure of materials and statements therefrom on the occasion in question violated the rights of this Defendant under the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments to the United States Constitution and under Article I, Sections 9, 10 and 19 of the Texas Constitution.

III.

The Defendant moves the court to suppress the following evidence:

- i. All statements made, whether written or oral, and such other actions of this defendant, which occurred at or subsequent to his/her detention on or about June 4, 2019.
- b. All books, letters, notes, records, documents and other tangible things that were seized from the Defendant on or about June 4, 2019.
- c. The testimony of any law enforcement officers, agents and all other persons working in connection with such officers and agents, and all persons present at or near the location of the arrest of the Defendant and the search of his residence in regard to any statements or evidence acquired or objects seized as set forth in paragraph “I” above.

IV.

Defendant would show the court the following legal objections:

- a. The arrest of the Defendant was made based on a warrant premised almost entirely on hearsay, which misrepresented probable cause, and in violation of his rights under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. *Beck v. Ohio*, 85 S.Ct. 223, 379 U.S. 89, 13 L.Ed.2d 142 (1964); *Payton V. New York*, 100 S.Ct. 1371, 445 U.S. 573, L.Ed.2d 639 (1980).
- b. All statements made by the Defendant at the time of and subsequent to his detention were products of his illegal arrest. *Dunnaway v. New York*, 99 S.Ct. 2248, 442 U.S. 200 60 L.Ed.2d 824 (1979); *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); Fourth, Fifth and Fourteenth Amendments, United States Constitution.
- c. Any statement made by the Defendant was not freely nor voluntarily made but was given as a result of compulsion and/or persuasion. *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed. 2d 908 (1964); *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966); Fifth and Fourteenth Amendments, United States Constitution.
- d. Statements given by the Defendant were made as a result of an interrogation that occurred when the Defendant did not have advice of counsel, wherein he had not been warned of his right to invoke his right to counsel, in violation of the rights guaranteed to him by the Fifth, Sixth and Fourteenth Amendments, United States Constitution. *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed. 2d 378 (1981).

e. That any alleged waivers by the Defendant of rights secured to him under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution were not valid because they were not voluntary and/or not a knowing and intelligent relinquishment of such rights. *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed. 2d 854 (1973); *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed. 2d 378 (1981); *Michigan v. Jackson*, 106 S.Ct. 1404 (1986).

f. That the search of the Defendant's home was without a warrant and without probable cause and any consent to search was not voluntary. *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed. 2d 564 (1971); *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed. 2d 854 (1973); *Bumper v. North Carolina*, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed. 2d 797 (1968).

g. For such other and further reasons as may appear or exist upon a full evidentiary hearing of this cause.

V.

The product of such search and seizure is therefore unlawful and all fruits thereof must be suppressed. All statements, either written or orally made, and all materials and substances seized during and after such acts were fruits of the initial violation of rights of this Defendant.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that upon hearing, this motion be granted and that the evidence referred to herein be in all things suppressed and the

United States Government and his witnesses be ordered not to disclose to the Jury or Court or in any way to allude to the fact of any materials or statement obtained thereby.

Respectfully submitted,

**LAW OFFICES OF
ERNESTO GAMEZ, JR., P.C.**

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**ATTORNEYS FOR DEFENDANT
ALVARO VEGA-RODRIGUEZ**

CERTIFICATE OF CONFERENCE

I, **ERIN ELIZABETH GAMEZ**, hereby certify that on this **15th day of August, 2019**, I conferred with the opposing counsel, **Ms. Ana Cecilia Cano**, United States Assistant Attorney, regarding the filing of this motion, and hereby state that she is opposed to this motion.

/s/ Erin Elizabeth Gamez

ERIN ELIZABETH GAMEZ

CERTIFICATE OF SERVICE

I, **ERIN ELIZABETH GAMEZ**, do hereby certify that on this **15th day of August, 2019**, a true and correct copy of the above and foregoing **Motion to Suppress Evidence** and its **Order** were served **electronically** upon **Ms. Ana Cecilia Cano**, Assistant United States Attorney, **United States Attorney's Office**, 600 East Harrison Street, Suite 201, Brownsville, Texas, 78520, ana.cano@usdoj.gov.

/s/ Erin Elizabeth Gamez

ERIN ELIZABETH GAMEZ